

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAVID BOWEN,

Plaintiff,

v.

Case No. 08-12877

MICHIGAN DEPARTMENT OF
CORRECTIONS, SERGEANT ALLEN,
PATRICIA CARUSO,

HONORABLE AVERN COHN

Defendants.

**ORDER
ADOPTING REPORT AND RECOMMENDATION
AND
GRANTING DEFENDANT ALLEN'S MOTION FOR SUMMARY JUDGMENT
(Doc. No. 39)
AND
DISMISSING PLAINTIFF'S CLAIMS AGAINST THE REMAINING DEFENDANTS
AND
DISMISSING THE CASE**

I.

This is a prisoner civil rights case¹ under 42 U.S.C. § 1983 claiming violations of the Eighth Amendment. Plaintiff's claim stems from a falling down 26 steps while being moved to an upper floor cell and injuring his back. He seeks compensatory damages and declaratory relief.² The matter was referred to a magistrate judge for all pre-trial

¹Plaintiff is no longer incarcerated. According to the Michigan Offender Tracking System, plaintiff was released on April 30, 2009.

²Plaintiff filed a separate case against different defendants arising out of the same incident which was also assigned to the undersigned. See Bowen v. Cady, 09-10414. On January 13, 2010, the Court issued an order adopting a magistrate judge's

proceedings. Defendant Allen filed a motion for summary judgment.

On February 22, 2010, the magistrate judge filed a report and recommendation (MJRR) recommending that the motion be granted. Specifically, the magistrate judge recommends that summary judgment be granted because plaintiff failed to exhaust his administrative remedies. The magistrate judge also recommends that (1) plaintiff's claim against the Michigan Department of Corrections (MDOC) be dismissed based on Eleventh Amendment immunity and (2) plaintiff's claim for prospective injunctive relief against Patricia Caruso in her official capacity be dismissed because plaintiff did not properly amend his complaint to assert such a claim and because plaintiff is no longer incarcerated.

II.

Plaintiff has not objected³ to the MJRR and the time for filing objections has passed. Plaintiff's failure to file objections to the report and recommendation waives any further right to appeal. Smith v. Detroit Federation of Teachers Local 231, 829 F.2d 1370, 1373 (6th Cir. 1987). Likewise, the failure to object to the magistrate judge's report releases the Court from its duty to independently review the motion. Thomas v. Arn, 474 U.S. 140, 149 (1985). However, the Court has reviewed the record and agrees with the magistrate judge.

report and recommendation and dismissing the case. See Doc. No. 24. On March 5, 2010, plaintiff filed a notice of appeal.

³Plaintiff filed a "Notice of Appeal" on March 5, 2010. The notice does not state the order from which he seeks to appeal.

III.

Accordingly, the MJRR is ADOPTED as the findings and conclusions of the Court. Allen's motion for summary judgment is GRANTED. Plaintiff's claims against the MDOC and Caruso are DISMISSED. This case is DISMISSED.

SO ORDERED.

Dated: March 15, 2010

S/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

I hereby certify that a copy of the foregoing document was mailed to David Bowen, 482624, 399 Center Street, Apt. 103, Otisville, MI 48463 and the attorneys of record on this date, March 15, 2010, by electronic and/or ordinary mail.

S/Julie Owens
Case Manager, (313) 234-5160